

AUG 22 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

MANUEL RUIZ,

Petitioner - Appellant,

v.

SYLVIA GARCIA,

Respondent - Appellee.

No. 01-56936

D.C. No. CV-00-00597-DOC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Argued and Submitted July 7, 2003
Pasadena, California

Before: **KOZINSKI, FERNANDEZ** and **RYMER**, Circuit Judges.

There is no clearly established Supreme Court law holding that a defendant has a constitutional right to an instruction on a lesser included offense. Cf. Beck v. Alabama, 447 U.S. 625 (1980) (holding that a lesser included offense

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

instruction might be constitutionally required in capital cases because of their unique nature). Ruiz’s state court conviction thus has not “resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d)(1); see also Lockyer v. Andrade, 123 S. Ct. 1166, 1172 (2003).

AFFIRMED.